

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY B. SMITH,
Plaintiff

vs.

DAVID C. NICHOLSON, TRUSTEE
OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI,
TRUSTEE OF THE DOMINIC M.
SAWICKI NOMINEE TRUST,
AND CAROL ANN WHITNEY
AND GLENN WHITNEY,
Defendants

CIVIL ACTION NO.: 04 CV 10632 MEL

**DEFENDANTS, DAVID C. NICHOLSON, TRUSTEE OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI, TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE
TRUST, CAROL ANN WHITNEY AND GLENN WHITNEY'S
JOINT MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

1 Q. Were you seated in the front passenger
2 seat?

3 A. I was, yes.

4 Q. You said when you were at the church the
5 priest invited everyone back to the house?

6 A. I believe -- I don't know what they do
7 now, but because of the relationship Joanne
8 Dayton and the Nicholson's we just naturally
9 went, whether he had said that or not. I don't
10 remember whether he did or not.

11 Q. Had you ever been to Old Lantern Lane
12 before?

13 A. No, I hadn't.

14 Q. How long a drive is it from the church?

15 A. A mile, mile and a half, about that.

16 Q. Did you follow other cars to get there?

17 A. Yes, we did, and because there were so
18 many cars we had to park on the road above their
19 home because down where their home was the area
20 was full of cars and we had to park up on the
21 road and that's where I had to walk down to the
22 house.

23 Q. Joanne was driving so she pulls onto Old
24 Lantern Lane?

1 A. Yes, and got out of the car and we went
2 down the hill.

3 Q. Before you got out of the car, I want to
4 ask you some questions. Did you drive down to
5 the Nicholson house to see if there was any
6 parking there?

7 A. We could see that there wasn't. Yes.

8 Q. And where she parked was it on a hill?

9 A. No. It was on a flat surface, a level
10 road.

11 Q. Where you fell was it on a hill?

12 A. That was on a hill, yes.

13 Q. Did she park behind another car?

14 A. She probably did, but I can't tell you
15 for sure.

16 Q. And from where you parked could you see
17 the Nicholson home?

18 A. No, we couldn't because it was down in a
19 hollow. You could see the road going to it.

20 Q. If you couldn't see the home, how did
21 you know there was no parking there?

22 A. Oh, we could see the road going down to
23 it and the area was full of cars, but the trees
24 and everything were around so we couldn't see the

1 house per se.

2 Q. Were cars lined up on both sides of Old
3 Lantern Lane?

4 A. Absolutely.

5 Q. Which side did she park on?

6 A. The right-hand side.

7 Q. So that means when you got out of the
8 door you would have been towards the trees on the
9 side of the road?

10 A. I got out of the door and then we had to
11 cross that road and go down the road that I fell
12 on.

13 Q. But your door would have been facing the
14 side of the road rather than the center of the
15 road?

16 A. Yeah, it was. Yes.

17 Q. Do you remember who you parked behind?

18 A. I don't know.

19 Q. You indicated that where you parked it
20 was flat?

21 A. It was just a straight flat road.

22 Q. And further towards the --

23 MR. SMITH: Let him finish the
24 question.

1 A. Sorry, Dear.

2 Q. Further down towards the Nicholson house
3 it declines towards the house?

4 A. That's right.

5 Q. How far did you park away from the area
6 where it declined?

7 A. Well, perhaps halfway down it
8 began -- it was gradual in the beginning and then
9 it became steeper towards the end as you got
10 closer to the house.

11 Q. The area where you parked was there a
12 lesser of a decline in that area?

13 A. No. It was a level road. I mean that
14 part of that road where we parked on was flat and
15 level. It was the hill began at the edge of that
16 road.

17 Q. How far were you from the hill?

18 A. Across the street from it.

19 Q. Do you know if it was 10, 20 feet?

20 A. How wide is the road?

21 Q. I don't know.

22 A. It was a regular road, two car road,
23 main road, main type road, whatever that is.

24 Q. So you exited the car?

1 A. Yes.

2 Q. At that time did you make any
3 observations of Old Lantern Lane?

4 A. No. Not particularly, no.

5 Q. When you started walking --

6 A. Oh, I can tell you in the beginning of
7 the road was macadam, was asphalt, beginning of
8 the hill as you came down it. It wasn't until
9 you got, oh, two-thirds of the way down that it
10 apparently washed out and there was I would think
11 a truck load of rock had been dumped in there,
12 large rock, half the size of my fist.

13 I mean it wasn't just gravel like we refer to
14 gravel. It was large rock and that had been
15 apparently it was a washout and those rocks had
16 been dumped in there to the lower half of the
17 road.

18 Q. So where you parked it was a different
19 type of pavement --

20 A. Oh, yes.

21 Q. -- than where you fell?

22 A. It was asphalt when we started, yes.

23 Q. How far did you have to walk before you
24 got to the washed out part of the road as you

1 described it?

2 A. 200, 300 feet; something like that.

3 Q. When you walked that 200, 300 feet who
4 were you with?

5 A. Joanne Dayton.

6 Q. Anyone else?

7 A. That's it.

8 Q. And at some point the road changed to
9 that washed out road?

10 A. Yes, that's exactly right.

11 Q. How far did you walk on the washed out
12 part of the road before you fell?

13 A. 10 or 12 feet; something like that, not
14 long. I was picking my way through those stones.

15 Q. Did you say anything before you fell
16 about the condition of the road to anybody?

17 A. I don't remember that I did, no.

18 Q. What type of shoes were you wearing that
19 day?

20 A. Flat shoes. I've worn flat shoes for 15
21 years; no heels, no nothing, just flat.

22 Q. And the road was dry?

23 A. It was. It was a beautiful dry day.

24 Q. Where was Miss Dayton when you were

1 walking with her, right next to you?

2 A. Not right next to me, but a little bit
3 away from me, side by side almost.

4 Q. Do you recall anyone else that was in
5 that area?

6 A. Oh, I do now. Her daughter and her
7 husband were following us down and were carrying
8 their baby, a small child, but they weren't
9 anywhere near us to be of any help to me. I just
10 fell. That was it.

11 Q. Whose daughter?

12 A. Joanne Dayton's daughter. Would you
13 like her name?

14 Q. Yes.

15 A. Debra Seith, S-E-I-T-H.

16 Q. They were behind you?

17 A. Yeah.

18 Q. Were there people --

19 A. Oh, 20 feet or so behind us, yes.

20 Q. Were there people walking in front you?

21 A. No. We were the only ones.

22 Q. And can you describe to me how you fell?

23 A. I skidded. I just really skidded on
24 those rocks and went down. That was it.

1 Q. Where were you looking when you fell?

2 A. I think I was looking where my feet were
3 going because of the condition of the road. I
4 was. I was picking my way down.

5 Q. And how did you fall, did you fall on
6 your backside, did you --

7 A. I did.

8 Q. -- fall forward?

9 A. That's exactly what I did.

10 Q. You fell on your backside?

11 A. I did.

12 Q. When you fell how close was Miss Dayton
13 to you, was she right there?

14 A. She was a little bit ahead of me. In
15 fact she was surprised that I was on the ground I
16 think when she realized, but not right beside me.
17 A little bit ahead of me, but no more than three
18 or four feet ahead of me

19 Q. So she didn't see you fall?

20 A. She didn't see me fall. Well, it
21 happened so suddenly. I don't know if I said
22 anything or what, but anyway.

23 Q. Was she the first person that came over
24 to you?